89-1740

CASE NO. _____

Supreme Court, U.S.
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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

SPRING TERM, 1990

RUDY G. STANKO,

Petitioner,

VS.

UNITED STATES PAROLE COMMISSION,
ATTORNEY GENERAL OF THE UNITED STATES, and
WARDEN JOHN SULLIVAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI

THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

Rudy G. Stanko
P. O. Box 8000
Bradford, PA 16701

STATEMENT OF ISSUES

What is the intent of Congress in the legislation of the Parole Commission and Reorganization Act (the PCRA)[1] ?

Did Congress delegate to an independent executive agency, United States Parole Commission, the right to perform functions which are within the traditional province of the judiciary?

Did the United States Parole Commission usurp judicial functions when it failed to follow its rules and regulations.

The nine specific illegal acts by the Commission and issues documented are:

1. The United States Parole Commission convicted the Petitioner of fraud, when in fact, the Petitioner was indicted and convicted of a conspiracy. The conviction of fraud, and the penalization of an additional 24 months of imprisonment violated the Bill of Attainder Clause of the United States Constitution, Article 1, Section 9.

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1 18 U. S. C. 4201-4218 (1976).

II. In the same instance, the United States Parole Commission abused it's discretion by violating its own regulations by placing the Petitioner in Chapter 3, subchapter D, section 331, which is entitled Theft, Forgery, Fraud, Trafficking, in Stolen Property, etc, rather than Chapter 1, section 101, which is entitled Conspiracy (See 28 CFR § 2.20).

III. The United States Parole Commission violated 18 USC § 4208 (g) by failing to advise the Petitioner as to what steps may be taken to enhance his release. (See, P. L. 94-369 and P. L. No. 94-838)(Also see Briggs vs. U.S.P.C. 736 F. 2d 446, 450 (8th Cir.).

IV. The United States Parole Commission abused its discretion by failing to act as an independent non-partial agency by violating the Congressional intent of statute law and it's own regulations. (Reference P. L. 94-233, Title 18 § 4206 & 4207, and 28 CFR § 2.13 & 2.19).

V. The United States Parole Commission abused its discretion by failing to protect the Petitioner's constitutional and statutory rights of individual sovereignty from corporate liability. (Reference Article 1, Section 9, Clause 2 of the United States Constitution; Amendments 5 and 9 of the Bill of Rights; 14 Amendment of the United States Constitution, and Title 42 USC § 1981 et. seq).

VI. The United States Parole Commission abused its discretion by failing to consider the disparity of sentencing and violated the Congressional intent of statute law and its own regulations. (References: P. L. No 94-233, No. 94-396, No. 94-648, P. L. 94-838; and

USPC's Rules and Procedure Manual 2.20-01 (B), 2.20-9, 2.24-01 (b), 2.13-07).

VII. The United States Parole Commission abused its discretion by failing to address the conviction as mandated by United States Parole Commission's Rules and Regulation Manual 2.13-05. The United States Parole Commission's Rules and Regulation Manual coincides with Title 28 CFR.

VIII. The United States Parole Commission abused its discretion by failure to use professional language as mandated by United States Parole Commission's Rules and Regulation Manual 2.13-05.

IX. The United States Parole Commission abused it's discretion in an arbitrary and capricious manner by failing to act as an independent agency as mandated by the intent of Congress in P. L. No. 94-184, No. 94-233, No. 94-369, and No. 94-648; 18 U. S. C. § 4202, and by violating the Constitution and its Rules and Regulations. (References: Article 1, Section 9 of the Federal Constitution, and 28 CFR § 2.36).

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OPINIONS AND JUDGEMENTS BELOW

On July 28, 1988, the Petitioner commenced this action for a petition for a writ of habeas corpus and/or mandamus, pursuant to 28 USC § 2241 and/or 1361, documenting the abuse of discretion by the United States Parole Commission (USPC) "in a manner that was inconsistent with the Federal Constitution, applicable statutes, and it's own published rules. Edwards vs. United States, 574 F. 2d. 937 at 942 (1978)(8th Cir.).

On June 8, 1989, Judge Harry H. MacLaughlin, United States District Court for the District of Minnesota ruled that, "the objections of the petitioner to the report and recommendation are overruled, the Court adopts the report and recommendation; and the petitioner's petition for a writ of habeas corpus is denied".

The United States District Court adopted the Magistrate's Report and Recommendation (Exhibits A and B) and did not address the grievances filed with the court. The Magistrate consolidated the Petitioner's nine (9) issues into five (5) issues in the Report and Recommendation.

On August 16, 1989, Petitioner Rudy G. Stanko filed with the Eighth Circuit Court of Appeals his Appellant's Brief. In this brief Petitioner outlined and documented the abuses of discretion, and the capricious and arbitrary manner which the United States Parole Commission denied parole to Petitioner Rudy G. Stanko. Although the United States Parole Commission is mandated to follow its rules and regulations, the Commission failed to follow the Constitution, statutes, regulations, and rules in making its determination concerning parole for Petitioner Rudy G. Stanko. The statutory and constitutional rights of Rudy G. Stanko were violated by the United States Parole Commission.

On September 15, 1989, the United States Attorney filed a Brief of Appellee on behalf of the United States of America. The arguments made by the United States of America included: Petitioner was not subjected to a Bill of Attainder because the Parole Commission correctly applied 28 C. F. R. § 2.20 in classifying Petitioner's offense and rating its severity; the Parole Commission properly adhered to the Guidelines for its parole determination and

was impartial; the Parole Commission did not abuse its authority because individual sovereignty does not shield Petitioner from liability for the actions of his company; Petitioner was not denied equal protection of the law because parole decisions are not required to mirror those of co-defendants; the Parole Commission did not fail to consider Petitioner's conviction in making its parole decision; the Parole Commission's failure to grant Petitioner a personal conference does not constitute non-compliance with its own rules because a personal conference shall be held only if feasible; the Parole Commission did not use unprofessional language depriving Petitioner of a fair hearing; Petitioner's institutional record indicating two disciplinary infractions provides a reasonable basis for the Parole Commission to add for months to Petitioner parole guideline range.

On October 5, 1989, Petitioner Rudy G. Stanko filed Appellant's Reply Brief. Petitioner counter-argued the United States Parole Commission failed to cite the complete regulation promulgated by the United States Parole

Commission when the Parole Commission failed to use the correct Chapter of the Parole Commission Guidelines; the United States Parole Commission ignored the intent of Congress by failed to inform the Petitioner what steps may be taken to enhance his change of being released at subsequent proceedings and ignoring the petitioners of 942 citizens; the use of two discretionary incident reports were previous resolved by the Bureau of Prisons, by the implication of sanctions that did not include a rescission or retardation of the parole date.

On October 31, 1989, the Eighth Circuit Court of Appeals affirmed the judgment of the district court.

On November 30, 1989, the mandate was issued.

JURISDICTION

An Appeal was filed to the United States Court of Appeals for the Eighth Circuit. Petitioner' brief was filed on August 16, 1989. On September 15, 1989, the Respondents filed Appellee's Brief. On October 5, 1989, Petitioner filed Appellant's Reply Brief. On October 31, 1989, the Eighth Circuit Court of Appeals affirmed the judgement of the District Court.

The Supreme Court has jurisdiction pursuant to Title 5, Government Organization and Employees Act, Title 18, United States Parole Commission Reorganization Act, and the Fifth and the Fourteenth Amendment of the United States Constitution.

The Supreme Court's review is needed when there is a decision involving a federal question which is in conflict with a rendered decision in another district court.

CONSTITUTIONAL PROVISIONS AND FEDERAL STATUTES

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STATEMENT OF THE CASE

Petitioner Rudy Stanko is a non-violent, minimum security, level 1 prisoner (lowest of the six levels of classification used by the Bureau of Prisons), and classified as of "very good character" (See salient scoring in the Parole Commission's Manual, page 27), due to the Petitioner's minimal criminal history.

The United States Parole Commission abused its discretion, acted in a capricious and arbitrary manner in denying parole to Petitioner Rudy G. Stanko. The Parole Commission, under Title 5 U. S. C. § 552 et. seq. is mandated to follow its rules and regulations.

The Parole Commission when it failed to follow the Constitution, statutes, regulations, and rules in making it's determination concerning parole guidelines violated the statutory and constitutional rights of Rudy G. Stanko.

REASONS FOR GRANTING CERTIORARI

Petitioner Rudy G. Stanko appeared before the United States Parole Commission with the "expectation of parole". Petitioner Rudy G. Stanko has a "liberty interest" in the decisions made by the United States Parole Commission. This "liberty interest" constitutes a constitutional dimension.

The United States Parole Commission is mandated by Title 5 of the United States Code to follow the rules and regulations which it has promulgated. The United States Parole Commission violated Title 5 of the United States Code and the "Due Process Clause" of the Fifth Amendment of the United States Constitution when it denied parole to Petitioner Rudy G. Stanko.

This denial of parole to Rudy G. Stanko by the United States Parole Commission constitutes a denial of a constitutional right.

This constitutes constitutional and statutory errors which demands a review by the Supreme Court.

ISSUE NO. ONE

AGENCIES TO ADHERE TO RULES AND REGULATIONS

The United States Courts have mandated that an agency adhere to the policies and regulations it promulgates.

"Inmate is entitled to expect Bureau of Prisons to follow it's own policies." Anderson vs. Smith, 697 F. 2d. 239 8th Cir. (1983); Also see Caldwell vs. Miller, 790 F. 2d. 589 (7th Cir. 1986).

> Regulation was promulgated pursuant to authority delegated by Congress to the Bureau of Prisons and the Attorney General. See 18 U. S. C. § 4042 (1982). It is, therefore, a "law of the United States" for purposes of the habeas corpus statute, see 28 U.S.C. § 2255 (1982); and see United States vs. Fuelhart, 106 F. 911, 913 (C.C.W.D.Pa. 1901)(holding that Treasury regulation is a law of the United States), cf. Chasse vs. Chasen, 595 F. 2d. 59, 62 (1st Cir. 1979)(for purposes of 28 U. S. C. § 1331(a)(1982), an agency regulation is a law of the United States if promulgated in a formal manner and pursuant to a statutory delegation of authority, and it is binding on all federal prison officials. Henderson vs. Carlson, 812 F. 2d. 874 (3rd Cir. 1987).

The United States Parole Commission is to adhere to the rules and regulations that it promulgates. United

States vs. Heffner, 420 F. 2d. 809 (4th Cir., 1970), contains a clear and direct statement on policy statements enforcement. See also United States vs. Leakey, 434 F. 2d. 7 (1st Cir.). The Court applied Accardi vs. Shaughnessy, 347 U. S. 260, 74 S. Ct. 499, 98 L. Ed. 689, a deportation case where established procedures were not followed; Viterarelli vs. Seaton, 359 U. S. 535, 79 S. Ct. 968, 3 L. Ed. 2d 1012; and Service vs. Dulles, 354 U. S. 363, 77 S. Ct. 1152, 1 L. Ed. 2d. 1403.

ISSUE NO. TWO

UNITED STATES PAROLE COMMISSION CONVICTED AND PUNISHED PETITIONER FOR FRAUD, ALTHOUGH HE WAS CONVICTED OF CONSPIRACY TO VIOLATE THE WHOLESOME MEAT INSPECTION ACT?1

The United States Parole Commission arbitrarily and capriciously abused it's discretion by failing to follow Title 28 CFR § 2.20 and its rules and regulations (United States Parole Commission's Manual) by placing the Petitioner in Chapter 3 (fraud) instead of Chapter 1, 12

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1 Exhibit D - Judgement and Commitment order;
Exhibit E - Page 18 of the Appellant's Parole Hearing Transcript states:

"In our judgement, your offense has three aggravating parts to it:

1). (I)s that you did it on the heals placed on probation for similar behavior;
2). (I)t amounted to large scale monetary losses to the government; you provided meat according to the government of a less grade than what you were paid for, which was to be used to feed children.

"All of those three facts have prompted us to look at this as more than an ordinary fraud and to require you to serve your entire sentence.

and 13 (conspiracy) of the United States Parole Commission's guidelines. The Petitioner was not indicted, convicted, or sentenced for fraud. The Petitioner was convicted of a conspiracy to violate the Federal Meat Inspection Act in violation of Title 18 U.S.C. § 371.

The United States Parole Commission invoked the unconstitutional prohibited bill of attainder by convicting, sentencing, and punishing the Petitioner to a longer term of imprisonment for fraud.

Title 28 CFR § 2.20, Chapter 1, section 101, states:

> "Grade conspiracy in the same category as the underlying offense." (See Exhibit F).

Title 28 CFR § 2.20, Chapter 12, states:

> "MISCELLANEOUS OFFENSES -- Maximum Sentence Authorized by Statute (not necessarily the sentence imposed)"

Grading Category

Less than 2 years	1
2 to 3 years	2
4 to 5 years	3
6 to 10 years	4
11 to 20 years	5
21 to 29 years	6
30 years to life	7

Title 28 CFR § 2.20, Chapter 13, states:

Severity		Points
Category	1	1/9
Category	2	1/3
Category	3	1
Category	4	3
Category	5	9
Category	6	27
Category	7	45

(See Exhibit G)

The maximum authorized sentence for a violation of the Wholesome Meat Inspection Act is three (3) years. (See 21 USC 601 et. seq.). The Petitioner's conviction falls into Category 2, as stated in Chapter Twelve (12) of the Parole Guidelines. Category 2 is assigned 1/3 of a point, as stated in Chapter Thirteen (13) of the Parole Guidelines. There are seven (7) convictions in this indictment. Seven convictions times 1/3 of a point equals 2 and 1/3 or Category 4. (7 x 1/3 = Category 4 or see Chapter 13 for examples listed on Exhibit F). Category 4 with a very good salient factor, as the Petitioner's past history indicates, falls in a guideline range of 12 to 18 months, not to the expiration of the Petitioner's sentence.

> "Once the commission develops guidelines which it determines will appropriately measure parole risk it should either follow the guidelines or amend them." Briggs vs. United States Parole Commission, 736 F. 2d. 446, 450 (8th Cir., 1984).

The Petitioner was convicted of conspiracy, however the United States Parole Commission used unproven allegations in which to substantiate the continual imprisonment of the Petitioner of at least, if not more, of an additional 24 to 48 months. The United States Parole Commission abused it's discretion by violating it's own rules and regulations and the Code of Federal Regulations.

ISSUE NO. TWO

"THE PROHIBITED BILL OF ATTAINDER"

Numerous court decisions have recognized the elements that constitute a bill of attainder that is prohibited by the Constitution as (1) presence of punishment, (2) inflicted by an authority other than a judicial authority, and (3) lack of a judicial trial. United States vs. Brown, 381 U. S. 437. Usurpation of legislative or executive law which incorporates any of the traditional functions reserved to judges and juries violates the prohibited bill of attainder clause. This was a constitutional reason the United States Parole Commission of the executive branch was eliminated by the 1984 Comprehensive Crime Control Act, P. L. 98-473 -- October 12, 1984.

The elimination of United States Parole Commission by the 1984 Comprehensive Crime Control Act can be traced to a string of cases beginning with Geraghty vs. United States Parole Commission, 579 F. 2d 238. The treatment by the Third Circuit Court of Appeals of the unconstitutional assumption of the traditional judicial

functions by the United States Parole Commission was left untouched by both the Supreme Court's vacatur of Geraghty vs. United States Parole Commission, 445 U. S. 388, 100 S. Ct. 1202, 63 L. Ed 2d. 479 (1980), as well as it's opinion reversing this Court in United States vs. Addonizio, 442 U. S. 178, 99 S. Ct. 2235, 60 L. Ed. 2d. 805 (1979). In these cases the Supreme Court specifically limited its discussion to the collateral habeas attack rather than to a direct constitutional challenge of the ex post facto law or the bill of attainder as it pertains to the United States Parole Commission. This constitutional question is first impression law except for the touching of this constitutional issue in the 3rd Circuit.

> "[T]he Commission, which can observe the prisoner during his incarceration, has a significant advantage over the court in determining eligibility for parole under a standard which is distinct from the traditional role of the judiciary. When, however, the parole authority focuses consideration entirely on factors of deterrence, incapacitation and retribution, it takes into account almost exclusively the very factors that are available to the sentencing judge. The Commission than begins the perform functions which are within the

> traditional province of the judiciary.[2] At least where the prior determination of the judicial branch are given no weight, therefore, serious questions are raised whether the constitutional protections provided by an independent judiciary are being undermined.[3] Geraghty vs. United States Parole Commission, 579 F. 2d. 238 at 261.

Geraghty, 579 F. 2d. 238 at 261, cert. denied, but remanded on other grounds, 440 U. S. 945, 99 S. Ct. 1420, 59 L. Ed. 2d. 632 (1980), is the only definition found in case law of the bill of attainder as it applies to the United States Parole Commission. The legal definition of "shall" must be examined and applied. If Congress did not want to include the mandatory language of "shall", it would have inserted "may".

> "This original and supreme will (Constitution) organizes the government, and assigns to different departments their respective powers. . . . The Constitution is either a superior paramount law,

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2 "(I)ndisputable, under our constitutional system, the right to try offenses against the criminal laws and upon conviction to impose the punishment provided by law is judicial. Ex Parte United States, 242 U. S. 27, 41, 37 S. Ct. 72, 61 L. Ed. 129 (1916).

3 See United States vs. Brown, 381 U. S. 437, 441-447, 85 S. Ct. 1707, 1711, 14 L. Ed. 2d 484 (1965) (separation of powers is at the root of Bill of Attainder clause, and "the legislative branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness, of, and levying appropriate punishment upon special person.")

unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislative shall please to alter it.

"If the former part of the alternative be true then a legislative act contrary to the Constitution is not law, if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable."

"Certainly all these who have framed written Constitution contemplate, them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislative repugnant to the Constitution is void.

"This theory is essentially attached to a written Constitution, and is consequently to be considered by this court, as one of the fundamental principles of our society. It is not, therefore, to be last sight of in the future consideration of this subject. Marbury vs. Madison, 1 Cranch [176-178].

In the case, United States vs. Brown, 14 L. Ed. 2d 484, at 488, the Court addressed the issues of the Bill of Attainder:

"The best available evidence, the writings of the architects of our Constitutional system indicates that the Bill of Attainder Clause was intended not as a narrow technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply - trial by legislature."

James Madison wrote:

> "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. The Federalist, No. 47, pp. 373-374 (Hamilton ed. 1880); Brown supra.
>
> "The doctrine of separated powers is implemented by a number of constitutional provisions, some of which entrusted certain jobs exclusively to certain branches, which others say that a given task is not be be performed by a given branch. For example, Article III's grant of "the judicial power of the United States" to federal courts has been interpreted both as a grant of exclusive over certain areas. Marbury vs. Madison, 1 Cranch 137." United States vs. Brown, supra.
>
> "The authors of the Federal Papers took the position that although under some systems of government (most notably that one from which the United States had just broken) the Executive Department is the branch most likely to forget the bounds of its authority. United States vs. Brown, supra.
>
> "The elements necessary to proving a Bill of Attainder might thus be said to be: Executive or Legislative acts "no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited on them without a judicial trial are bills of attainder prohibited by the Constitution. United States vs. Brown, supra, United States vs. Lovett, 328 U. S. 303.

This is the exact type of tyranny the framers of the United States Constitution feared, and so installed the prohibited Bill of Attainder clause. The Bill of Attainder and the ex post facto clause in Article 1, Section 9 and 10, is the only clause mentioned twice in the original United States Constitution:

Section 9: "No Bill of Attainder or ex post facto law shall be passed."

Section 10: "No State shall . . . pass any Bill of Attainder, ex post facto Law . . . "

The United States Parole Commission reversed a judicial determination and abused its authority in rating and penalizing the Petitioner outside the established guidelines for the Petitioner's conviction. Title 28 CFR 2.20, Chapter 1 of the United States Parole Commission Rules and Procedure Manual (USPCRPM) states specifically a conspiracy charge is to be rated in the same category as the underlying offense (Page 29 and 53 of the USPCRPM), which is category four. Category four with a very good salient factor reveals a guideline range of 12 to 18 months. However, the United States Parole Commission

has ordered the Petitioner to be punished in excess of the guidelines and to continue his sentence until expiration of the mandatory 2/3 release date.

The usurpation of undelegated judicial or legislative authority by members of the executive branch of government constitutes a violation of the separation of powers doctrine on which our Constitution is based.

> "A prisoner's eligibility for reduced imprisonment is a significant factor in entering the judge's calculation of the sentence to be imposed". Weaver vs. Graham, 450 U. S. 31 at 32-35. Also see U. S. vs. Slutsky, 514 F. 2nd 1222, at 1229 (2nd Cir., 1975).

> "The Parole Commission . . . , is not a court of law. It lacks power to try and convict for any offense state or federal." Warren vs. United States Parole Commission, 659 F. 2nd. 183 (1981).

> ". . . . it appears that the Commission through it's hearing officers is blindly adhering to a policy that a certain minimum amount of time must be served (solely based upon statistical guidelines) may well be arbitrary and capricious, an unwarranted intrusion into the judicial sentencing process, and in excess of the Commission's statutory authority . . . and in this instance, in our judgment does result in more injustice." United States vs. Wigoda, 417 F. Supp. 276, at 281 (1976).

Title 18 USC 4205 states: "A prisoner shall be eligible for release on parole after serving one-third of such term".

The Merriam-Webster Dictionary defines shall as "used as an auxiliary to express a command."

Congress established a one-third parole eligibility, which by it's very language is a right, in enacting Section 4205 (a). Congress did not intend to allow a tribunal of the executive branch to legislate punishment by arbitrarily and capriciously making judicial decrees to divest a Parolee of this right. This type of action may be viewed as a Bill of Attainder and a usurpation of an undelegated judicial and legislative authority. This is in direct violation of the separation of powers doctrine.

Congress enacted Section 4205 (a) with full knowledge that "shall" denotes a command or obligation. A tribunal of the executive branch may not utilize a countermand judicial decree or specific statute enacted by the United States Congress to inflict pains and penalties in their parole judgments.

The Petitioner shall be eligible for parole after serving one-third of the sentence unless he poses a serious threat to society. The Petitioner should not be punished for an accusation that has never been tried in a court of law, nor which he has never had an opportunity to defend against before a jury of his peers.

In a recent a U. S. Supreme Court decision on parole the Court confirmed:

> "(I)n other words, an official only has discretion when the standards set by a statutory or regulatory scheme cannot be applied mechanically. . . . In deciding that this statute created a constitutionally protected liberty interest, the Court found significant its mandatory language--the use of the word "shall"--and the presumption created--that parole release must be granted." Board of Pardons vs. Allen, 96 L. Ed. 2d. 303 at 310 (1987).

ISSUE NO. THREE
ENHANCEMENT

The sentencing court issued to the Petitioner the largest sentence ever imposed for a violation of the Wholesome Meat Inspection Act, however the sentencing court was confident of the Petitioner's character to release the Petitioner on bond for two years during the appeal process. During this two year period, the Petitioner was law abiding and a responsible member of society. The Petitioner's past history confirms that he has never posed a threat to society, and that his release is compatible with the general welfare of society.

The United States Parole Commission violated 18 USC § 4208 (g) which is derived from P. L. No 94-233, 369, & 838:

> "(T)he conference shall include advice to the prisoner as to what steps may be taken to enhance his chance to being release at a subsequent proceeding."

The United States Parole Commission and abused it's discretion and ignored this mandate from Congress, thereby imprisoning the Petitioner until the expiration

of his sentence (72 months) regardless of his past and future accomplishments.

> "Parole is awarded based on an expectation of the prisoner's post-confinement societal conduct. Briggs vs. United States Parole Commission, 736 F. 2d. 446 at 449 (8th Cir. 1984)." Also see P. L. No 94-369.[4]

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4 "Before granting parole, the Commission must decide . . . there is reasonable probability that he will not violate the law on release, and his release is compatible with the general welfare of society."

ISSUE NO. FOUR
THE COMMISSION DID NOT ACT AS AN INDEPENDENT NON-PARTIAL AGENCY

There were no adversarial witnesses to contest the release on parole of Rudy G. Stanko, however there were 942 signatures of citizens from the community in support of the Petitioner's release on parole.

> Parole Commission must consider relevant favorable as well as unfavorable information in making its decisions. Hearn vs. Nelson, (1980, DC Conn) 496 F. Supp. 1111.

The United States Parole Commission nullified the congressional intent of being a fair, equitable, and independent agency, thereby violating 28 CFR 2.13, 28 CFR 2.13.02, 28 CFR 2.19. The United States Parole Commission did not act as an independent non-partial agency.

> Inference is raised that Parole Commission has failed to consider favorable information in violation of 18 USCS § 4207 where period of incarceration is much greater than that suggested by Parole Guideline, despite abundance of information favorable to prisoner. Hearn vs. Nelson (1980, DC Conn) 496 F. Supp. 1111.

Fair and equitable treatment is to be provided by the Parole Commission as outlined in the congressional

intent in Public Law 94-233, entitled Parole Commission and Reorganization Act; it states:

> The Committee on the Judiciary, to which was referred an act to establish an independent and regional United States Parole Commission, to provide fair and equitable parole procedures. p. 335.

The Commission is to be independent, and to provide fair and equitable parole procedures. The Commission by actively engaging in unfounded hostile accusations and comments was not carrying out the Congressional intent of being a fair, equitable, and an independent Commission. The Commission violated Public Law and their own rules and regulations.

The unfounded hostile accusations and comments were:

> 1. "(I)t amounted to large scale monetary losses to the government, and I am not saying that you provided dangerous meat, I am saying that you provided meat according to the government of a lesser grade than what you were paid for, . . . " [5]
>
> 2. "I'm only guessing, I would place some money on this. . . . " [6]

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5 See Parole Hearing Transcript, exhibit E.

6 See Parole Hearing Transcript, exhibit E.

There was no representative of the government present to offer documented proof in opposition to the Petitioner's parole.

At the initial hearing, interested parties are allowed to appear before the Commission and offer a statement, §2.13 (b) states:

> . . . Interested parties who oppose parole may select a representative to appear and offer a statement.

28 CFR 2.13-02 (e) states:

> If the written statement so offered contains exempt material, and the witness represents a government agency, it is the duty of that witness to determine what material is exempt and to summarize that material for the benefit of the prisoner.

28 CFR 2. 19 (6)(b)(1) states:

> The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons."

Title 18 U. S. C. 4207 states:

> "In making a determination under this chapter (relating to release on parole) the Commission shall considerate, ... such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

The preponderance of evidence of the 942 petitioners was in favor of the Petitioner. The United States Parole Commission failed to take this into account, and to make a determination as required by Title 18 U. S. C. 4206 in deciding (1) if there is a reasonable probability that he will not violate the law on release, (2) and his release is compatible with the general welfare of society.

There was no interested party, who selected a representative and appeared in opposition of parole, nor was any written statement submitted to the Parole Commission for their deliberation.

ISSUE NO. FIVE

PROTECTION OF INDIVIDUAL SOVEREIGNTY FROM CORPORATE LIABILITY

The Petitioner was not an officer or an employee of the Cattle King Corporation was never considered as a defense of the Petitioner by the jury. There persist a false assumption the Petitioner was a corporate officer. The United States Parole Commission was notified the Petitioner could not be held liable, as a individual stockholder, for a contract(s) between various parties and the Petitioner's co-defendant--the Cattle King Corporation.

The following constitutional clause incorporate "individual sovereignty".

> 1. "The privilege of the Writ of Habeas Corpus shall not be suspended", Article 1, section 9, clause 2. The Petitioner cannot be imprisoned for a corporate contract or crime.
>
> 2. "Nor be deprived of life, liberty, or property, without due process of law," Article 5 of the Bill of Rights.
>
> 3. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the

people", Article 9 of the Bill of Rights.[7]

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7 "The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments. Griswold vs. Connecticut, 318 U. S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678.

"And, the Ninth Amendment in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the "liberty" protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentions in the first eight amendment. Griswold, supra at 520 L. Ed. 2d, United Public Workers vs. Mitchell, 330 U.S. 75, 94-95, L. Ed. 754, 769-770, 67 S. Ct. 556.

"In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and (collective) consciences of our people" to determine whether a principle is "so righted (there) . . . as to be ranked as fundamental." Griswold, supra., Snyder vs. Massachusets, 291 U.S. 97, 105, 78 L. Ed. 674, 677, 54 S. Ct. 330, 90 ALR 575. The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institution. . . ." Griswold, supra. Powell vs. Alabama, 287 U. S. 45, 67, 77 L. Ed. 158, 169, 53 S. Ct. 55, 84 ALR 527. "Liberty" also "gains content from emanations of . . . specific (constitutional) guarantees" from experience with the requirements of a free society." Griswold, supra., Poe vs. Ullman, 367 U. S. 497, 517, 6 L. Ed. 2d. 989, 1004, 81 S. Ct. 1752.

"In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to be effectuation of a proper state purpose." Griswold, supra at 523.

4. "(N)or deny to any person within its jurisdiction the equal protection of the laws", 14th Amendment to the U. S. Constitution.

"Although the Fifth Amendment unlike the Fourteenth does not have an equal protection clause, the Due Process Clause of the Fifth Amendment prohibits federal action if the same action taken by a state would be proscribed under the Fourteenth Amendment." Bolling vs. Sharpe, 374 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954).

The Petitioner is protected under the equal protection clause from actions and contracts of an artificial person incorporated under the laws of the State of Colorado.

The hearing officer's statement:

"(I) am not saying that you provided dangerous meat, I am saying that you provided meat according to the government of a lesser grade than what you were paid for, . . ."

did not mention the Cattle King Corporation, who was co-defendant with Petitioner. The Cattle King Corporation was the person who produced and was paid for the meat -- not the Petitioner, as implied by the Commissions referral to "YOU".

The corporation, Cattle King, Inc., had pursuant to the corporate laws for the State of Colorado, appointed certain officers to the Corporation. The direct operation of Cattle King Corporation was the responsibility of the President, Vice-President, Secretary, and Treasurer, and not that of the Rudy Stanko who was neither an officer or an employee of the Cattle King Corp.

Under statute law in the State of Colorado, the Cattle King Corporation, is an identity separate and apart from Petitioner Rudy Stanko. The attempt to impose upon the Petitioner Rudy G. Stanko, the liability possibly incurred by a corporation, specifically, Cattle King, Inc. is a direct violation of corporate law protecting individual liability.

It must be specifically pointed out to the National Parole Commission that Rudy G. Stanko has never waived his protected rights of corporate actions. Therefore individual liability can not be incurred by a corporate stockholder, and liability must be shouldered only by the corporation.

ISSUE NO. SIX

FAILURE TO TAKE INTO ACCOUNT UNWARRANTED CO-DEFENDANT DISPARITY

In establishing the Parole and Reorganization Act (P. L. 94-233) Congress stated:

1. Senate Report No. 94-369:

> "The Committee on the Judiciary, to which was referred (H. R. 5727) an act to establish an independent and regional United States Parole Commission, to provide fair and equitable parole procedures, . . . " page 1.

2. Senate Conference Report No. 94-649:

> "In the first instance, parole has the practical effect of balancing differences in sentencing policies and practices between judges and courts in a system that is as wide and diverse as the Federal criminal justice system. In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offense." (page 1 of the Joint Explanatory Statement of the Committee of Conference).

House Conference Report No. 94-838 which accompanies H. R. 5727 states:

> "[I] t is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances."

"The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well a the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen.

3. Contrary to the intent of Congress and the 8th Circuit ruling in Edwards, supra at 942-43:

"The goals of the guideline system are (1) to reduce the disparity in sentences meted out to similar offenders committing identical offenses, and (2) to contribute more predictability and fairness to Parole Board determination. See e.g. S. Rep. No. 94-369, 94th Cong., 2d Sess. 18 (1976), reprinted in (1976) U. S. Code Cong. & Admin. News, p. 340.

The sentencing court issued to the Petitioner the largest sentence ever issued for a violation of the Wholesome Meat Inspection Act "to warn and deter others thus avoiding impugning the integrity of the industry" (See Sentencing Transcript, p. 48 at 49, exhibit H). This is not compatible with other related punishment given for similar crimes. The Parole Commission is obligated to take the intention of the sentencing judge and periods of incarceration for similar offenses into consideration, and to use it in determining guidelines.

Petitioner Rudy G. Stanko's sentence exceeded the average by 60 months.

> "In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offenses. . . . " P. L. 94-369, supra.
>
> "From a historial perspective, parole originated as a form. . . to mitigate unusually harsh sentences. . . ", ibid.

The facts show there is an unbelievable disparity and inequities of punishment directed at the Petitioner in this conviction.

"(T)he denial of parole is the taking of an individual's liberty, or at least the opportunity for him to obtain liberty. The Constitution requires due process of law." (See last paragraph of the Senate Report No. 94-369).

> "Although the Fifth Amendment unlike the Fourteenth does not have an equal protection clause, the due process clause of the Fifth prohibits federal action if the same action taken by a state would be proscribed under the Fourteenth Amendment." Bolling, supra.

The Commission did not consider the unwarranted co-defendant disparity pursuant to the United States Parole Commission Rules and Procedures Manual (USPCRPM) section 2.20-09 or 28 CFR.

> Unwarranted co-defendant disparity refers to different parole decisions for similarly situated offenders where no legitimate reasons for the difference in decisions exists.

USPCRPM section 2.20-01 (B) states:

> . . . it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances.
>
> It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice.

This is the largest period of confinement, 40 to 56 months without parole for a violation of the Federal Meat Inspection Act. Gary Waderich, who was convicted at the same trial for the same offenses, was released from confinement after serving 1/3 of his sentence or 5 months.

USPCRPM section 2.20-09 states:

> Example 7: [C]odefendants appear equally culpable have similar salient factor scores, have identical sentences, and appear to have no other relevant differences. Significantly different decisions by the Commission in such cases constitute unwarranted disparity and are to be avoided.

Gary Waderich and Rudy Stanko are categorized as very good parole risk in the salient factor guidelines.

Melvin vs. Petrovsky, 720 F. 2nd 9 (8th Cir. 1983) states:

> "Where there was nothing in record to show that United States Parole Commission considered parole status of co-defendant and where offense classification regulation appeared to have been applied inconsistently to defendant and co-defendant, there was failure of the Commission to follow it's own rules and regulations, and reconsideration was accordingly order. F. R. A. R. Rule 41 (a), 28 U. S. C. A."

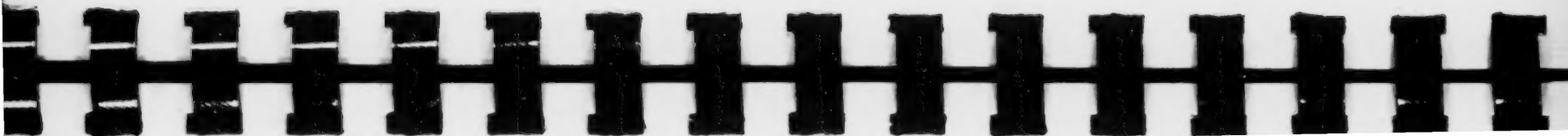
USPCRPM section 2.24-01 (b) states:

> For initial and reconsideration hearings, an attempt should be made, where feasible, to ascertain the parole action taken relative to any codefendants.

The Commission failed to consider the disparity between co-defendant Gary Waderich and Rudy Stanko. The Commission failed to comply with it's own regulations (28 CFR § 2.13.07) by it's failure to address any departures from the guidelines when comparing no relevant differences of the co-defendant.

By observing the intent of the sentencing judge, the Congressional intent of the maximum sentence

allowed for violations of Meat Inspection Act, and actual sentences imposed, there exists a substantial difference imposed as the result of Judge Finesilver's "need to warn and deter others". The Petitioner was given a lengthy sentence by a judge who needed "to warn and deter others", not as an accurate reflection of Congressional intent, nor of other actual sentences imposed.



ISSUE NO. SEVEN

FAILURE TO ADDRESS THE CONVICTION

The United States Parole Commission failed to address the most important Due Process issue - The indictment and conviction of the Petitioner.

The Commission failed to correctly follow in whole or in part the USPCRPM:

> §2.13 (c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and of the reasons therefore . . . . .
>
> §2.13 (d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines evaluation statement containing the prisoner's offense severity rating and salient factor score . . . . as well as specific factors and information relied upon for any decision outside the range indicated by the guidelines.
>
> §2.13-05. Summary Formats. . . . . In preparing correspondence, hearing summaries, reports and other documentation, use professional language which describes the subject and explains the Commission's position clearly, simply, and accurately. It should be kept in mind that much of what is written is disclosable to the prisoner or release and may come before the Courts, the Congress, or the public. Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive discredits the Commission and the writer, and its use violates the Commission policy.

The Commission violated the above rules and regulations by it's failure to correctly address the prisoner's conviction.

> Although it may be proper for Parole Commission to consider counts of indictment which have been dismissed commission abuses its discretion in considering participation in crime for which there is not substantial information to substantiate that participation. Marshall vs. Garrison, (1981, CA 4 Va) 659 F. 2d. 440.

The Commission stated three reasons why Rudy G. Stanko was not eligible for parole:

> 1). "you did it on the heels of just being placed on probation for similar behavior.";
> 2). "it amounted to large scale monetary losses to the government"; and
> 3). "I am not saying that you provided dangerous meat, I am saying that you provided meat, I am saying that you provided meat according to the government of a lesser grade than what you were paid for, which was to be used to feed children."

These three factors have nothing to do with the allegations in the indictment and subsequent convictions for which Petitioner is serving a sentence.

The Commission failed to describe the subject in clear, simple, and accurate language. The Commission

states the prisoner was convicted of violations of the Federal Meat Inspection Act, but failed to address the particular convictions which were clearly, simply, and accurately stated in the indictment.

P. L. No. 94-369 specifically state:

> "The guidelines take into account the circumstances of the individual both in his personal life and with respect to the offense which he has committed."

> "The denial of parole is the taking of an individual's liberty, or at least the opportunity for him to obtain liberty. The Constitution requires due process of law."

The Commission failed to adequately consider the preponderance of evidence presented them and in existence. The Commission made this statement at the Petitioner's initial parole hearing:

> "You came in with a prior record, certainly that's not the worst prior record in the world, as both of you (co-defendants) have been given a intimated "while collar" offender. Six years for the first serious conviction is a heavy sentence. He must have thought that what you did was, I'm only guessing, I would place some money on this, that this is why he gave you six years, that he not only thought it was a monetary loss to the government, but thought that there was a possibility of providing lower grade meat to the children of this country. And I would

> guess that this was in his thinking, not necessary harmful, but lower grade meat. See Parole Hearing Transcript, p. 17 & 18

The Commission's failure to review the proper evidence resulted in an incorrect assumption that the severe sentence was imposed because of monetary loss and providing lower grade of meat to children, when in fact the sentence was imposed "to warn and deter others thus avoiding impugning the integrity of the industry" (see Sentencing Transcript, p. 48 & 49, Sentencing Courts comments, exhibit H).

> Decision to grant or deny parole . . . must be guided by minimal standards of due process of law which at same time reflect need of parole system to function consistently with its purposes and responsibilities. Childs vs. United States Board of Parole, (1974) 167 App. DC 268, 511 F. 2d. 1270.

The Commission's "guessing and betting of money" violated the Commission's rules and regulations, which state, "the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability." The Commission's opinion based up "guessing" and "betting money" further imposed severe punishment upon Rudy

Stanko. This decision was not based upon facts that best accord with reason and probability, nor does the reasons represent the explanation of the facts.

> "There is a need to warn and deter other owner/operators and executives that they are and will be held ultimately responsible for implementing and enforcing policies and procedures to ensure compliance with the Meat Inspection Act, and that they cannot insulate themselves from this responsibility whether or not they are . . . present. p. 48 and 49 (Exhibit H).

The Sentencing Court was primarily interested in the punishment serving as a determent to others as opposed to serving as punishment. Rudy Stanko is serving a sentence of six years so others are warned and deterred and thus avoiding impugning the integrity of the industry. The Sentencing Court hoped to indirectly protect the public interest By deterring others. This is not compatible with other related punishments given for similar crimes. The Parole Commission is obligated to take the intention of the sentencing judge and periods of incarceration for similar offenses into consideration, and to use it in determining guidelines.

ISSUE NO. EIGHT

FAILURE TO USE PROFESSIONAL LANGUAGE

The Parole Commission and Reorganization Act the House in P. L. No. 94-838 stated:

> "The legislation provides a new statement of criteria for parole determinations, which are within the discretion of the agency, but reaffirms existing case law as to judicial review of individual case decisions."

The Senate confirmed in P. L. No. 94-369:

> "The constitutional test to be applied to parole is not one of right, but whether or not parole is administrated in a fashion that is neither arbitrary nor capricious to the individual."

The United States Parole Commission is mandated by Congress to preform certain functions, there is no "constitutional dimension" to statutory law. Once Congress has mandated an agency to preform certain functions in a certain manner, the agency must fulfill that mandate, there is no discretion, there is no "a bit untoward"ness involved. It it simply an issue of whether the United States Parole Commission has fulfilled the mandates set out by Congress. If the United States

Commission failed to follow these mandates, then the United States Parole Commission abused its discretion and acted in a capricious and arbitrary manner. When the United States Parole Commission abuses its discretion Petitioner Rudy G. Stanko is entitled to release.

> Prospective parolee's right to due process would be violated if Commission made parole decision based on information which was obviously false or of such untrustworthy nature that no reasonable factfinder would rely on it; parole candidate's participation in parole fact-finding process, rights to reasonable access to adverse information, to present and respond to evidence presented at parole hearings, and to representation, along with Commission's obligation to resolve contested facts by preponderance of evidence adequately guarantee that parole decision will be based on accurate facts. Fatico vs. Kerr (1983, WD Wis) 569 F. Supp. 448.

Representative Alex is required to use professional language, he deliberately violated Parole Commission policy by using insensitively descriptive language, in seeking to determined "what happened on the street", he admits he was "not interested in what happened at the trial". The Parole Commission is obligated to made parole decisions based on information that is reliable and reasonable. Representative Alex defeated the intention

of the Parole Commission goals and objectives by the use od false and untrustworthy information in making a parole decision.

The hearing examiners are mandated to use reliable information, and must base their determinations upon substantial information based upon accurate facts. This was not done.

The Parole Commission dwelled upon a lower grade of product. The charge of "supply(ing) meat in an inferior grade over a course of 20 years of consumption, high fat and veins and so forth". Petitioner Rudy G. Stanko was never accused or convicted of selling a lower grade of meat. The USDA had inspected and certified meat produced as excellent and wholesome, the hearing examiners concluded, without evidence, that the meat could not be sold at the contracted price because it was not of the proper grade

> Board of Parole is not forced to make full scale investigation of all supportive facts used by prisoner apply for parole, and it is not unreasonable for Board to base their ultimate decision denying parole on inmate's extensive past criminal record. Scarpa vs. U. S. Board of Parole (1973, Ca 5 Ga) 477 F. 2d. 278,

vacated on other grounds 414 U. S. 809, 38 L. Ed. 2d. 44, 94 S. Ct. 79.

Parole Manual §2.13-05 states in preparing correspondence, hearing summaries, etc., use of professional language which describes the subject and explains the Commission's position clearly, simply, and accurately is required. "Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive . . . violate the Commission policy."

The Commission's main thrust of questioning and conclusions were prejudicial and discriminatory. The thrust of the questioning by the Commission did not equate with the conviction or the indictment: quote: "I (Commission's representative Alex) am not interested in what happened at the trial, I am interested in what happened in the street, would you please tell us." (See page 4 of the Hearing Transcript, exhibit I). The Petitioner was never accused or convicted of selling a lower grade of product. Yet, Commission dwelled upon this issue instead of addressing the issues of the indictment and the conviction. (See Exhibit I, page 4).

ISSUE NO. NINE

ARBITRARY AND CAPRICIOUS RECESSION OF THE PAROLE GUIDELINES WITHOUT A RECOMMENDATION FROM THE STAFF OF THE BUREAU OF PRISONS

The House and the Senate agreed in their respective reports the newly created United States Parole Commission was to be an independent agency.

> "This section (18 USC § 4202) establishes a nine-member U. S. Parole Commission as an independent agency in the Department of Justice. The Commission is attached to the Department solely for administrative purposes. It is the intent of the Conferees that decision making be independent of, and not governed by, the investigative and persecutorial functions of the Department of Justice."

The United States Parole Commission violated 18 USC § 4202, the intent of Congress, it's own rules and regulations. The Commission was not acting as an independent body and is prohibited from imposing a penalty of additional confinement without a recommendation from the Bureau of Prisons (BOP).

According to USPCRPM section 2.36 (3) (b):

> . . . disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

The United States Parole Commission assessed the Petitioner the maximum guidelines for alleged minor rule infractions.

The Federal Bureau of Prisons (BOP) is restricted by 28 CFR § 541.13 and/or Policy Statement 5270.6 by the sanctions A thru N listed on Exhibit K. The Bureau of Prisons did not impose sanction A (see Exhibit L), which is "recommended parole date rescission or retardation. The United States Parole Commission took it upon themselves, without a recommendation by the Bureau of Prisons to rescind the Petitioner's parole date.

The Bureau of Prison Policy No. 5322.7 states:

> "It is often useful to divide an institution's total incident report rate into that part which groups 100 and 200 level incident reports and that part which includes 300 and 400 level. This is because 100 and 200 level incidents are more important and serious than are 300 and 400 level. Additionally, 300 and 400 level report could more easily reflect staff discretion." (Exhibit M).

This assessment is extremely harsh, considering it is the same assessment given to prisoners who admit to assault, intoxication, or drug abuse while incarcerated or 100 and 200 level incidents.

The Commission failed to consider the mitigating circumstances, evidence, and the Petitioner's lack of due process in the allegations by the Bureau of Prisons when they assessed the Petitioner additional days of confinement without considering the preponderance of evidence or lack of judicial proof of criminal behavior according to 28 CFR 2.36 (b).

The Bureau of Prisons did not recommend, as one of it's sanctions (28 CFR 541.12), a rescission or retardation of the parole date on any of the Parolee's incident reports. The Commission was not acting as an independent body, and is prohibited from imposing a penalty without a recommendation from the Bureau of Prisons.

This additional penalty would be considered double jeopardy since the sanctions of a rescission of the parole date were not imposed at the time of the incident, and could not be defended against. The sanctions imposed by the Bureau of Prisons at Leavenworth were two weeks restriction to quarters, and 10 hours extra duty. The sanctions imposed by the Bureau of Prisons was two weeks room restriction and a forfeiture of 27 days SGT.

The Commission by assessing the Petitioner, additional days of confinement as the force of law, is an usurpation of undelegated authority, which constitutes an unconstitutional act prohibited by the Bill of Attainder clause.

The Commission issued a penalty of additional incarceration because of two alleged incident reports, after the punishment was imposed by the Bureau of Prisons, therefore punishing the Petitioner twice for the same offense. These alleged incidents were not in the magnitude of criminal conduct nor could these incidents, if proven in a court of law, be considered criminal behavior. The Commission, which is not a judicial body, arbitrarily and capriciously assessed the Petitioner additional extra days in prison. These alleged incidents consisted of an accusation of the Petitioner possessing a cardboard file folder for his legal papers and a misunderstanding of a proper time in which the Petitioner was assigned to a program. The Petitioner has already been penalized by being confined to the segregation and detention units of the BOP.

The imposition of punishment by the Commission of extra confinement, in addition to that punishment in a previously imposed sanction by the Bureau of Prisons constitutes a double jeopardy punishment prohibited by the Articles of the Constitution wherein they deprive the Petitioner of his due process rights of an expectation of parole and are further prohibited by the repealed act of Congress. The Board of Pardons and Paroles' right to take good time and impose additional confinement was repealed under 18 USC § 4201 to 4218 in 1976 with the creation of the Commission and is further prohibited by law.

The final word on the INTENT OF CONGRESS:

> 'The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well as the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen. . . . Of equal importance, however, parole provides a means of releasing those inmates who are ready to be responsible citizens, and whose continued incarceration, in terms of the

needs of law enforcement, represents a misapplication of tax dollars." House Conference Report 94-838 & Senate Report No. 94-369.

"The legislative history further supports the conclusion that this statute places significant limits on the discretion of the Board", Board of Pardon, supra at 314.

CONCLUSION

FAILURE TO ADDRESS ISSUES OF HABEAS CORPUS

The United States Parole Commission failed to address the key elements of the petition for writ of habeas corpus and/or writ of mandamus.

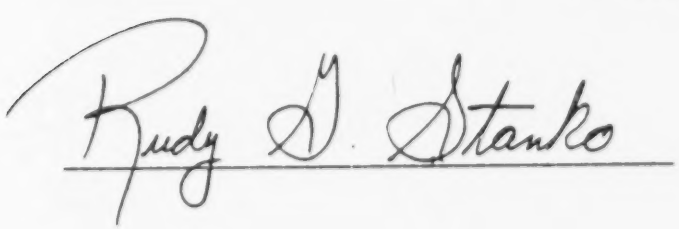
> Although prisoner has no legal right to release on parole, he has right to have Parole Commission comply with 18 USCS § 4206 and its rules in denying him parole, and habeas corpus is available to prisoner who has been denied release for false, insufficient or capricious reasons or if no reasons are given him, or if denial is in violation of laws of United States, including federal regulations to which Commission is subject, or if Commission's denial of parole was arbitrary, capricious or abuse of discretion; reasons for denial of parole must be given to prisoner and this duty arise from basis of rehabilitation process (§4206); determination of whether Parole Commission abused its discretion involves consideration of pertinent statute and regulations as well as circumstances of case. Shahid vs. Crawford, (1977, DA Ala) 439 F. Supp. 126.

The United States Parole Commission is mandated by statutes, regulations, rules, and policy to preform certain functions. These functions and duties are owed to Petitioner. Petitioner sought from the United States District Court a writ of mandamus to have these functions

and duties owed to him, preformed by the United States Parole Commission.

The United States Parole Commission violated the Constitution, statutes, and administrative law in taking the Petitioner outside his guideline range of 12-18 months. Therefore, the Petitioner, in the name of justice, requests this Court to issue a writ of certiorari.

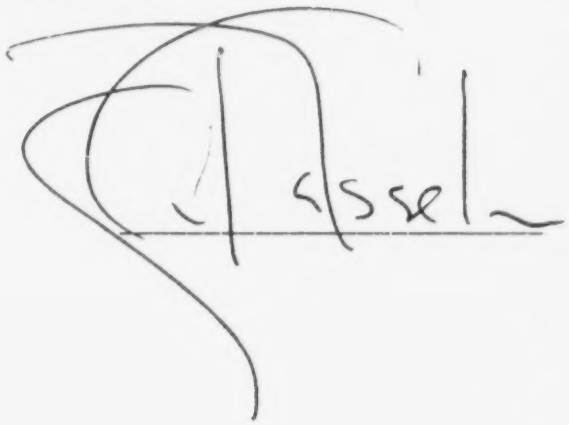
Respectfully submitted,



CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was sent on this 25th day of January, 1990 to:

John M. Lee
234 U. S. Courthouse
Minneapolis, MN 55401



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 89-5342

Rudy G. Stanko,	*	
	*	
Appellant,	*	
	*	
v.	*	Appeal from the United States District Court for the District of Minnesota.
	*	
United States Parole Commission, Attorney General of the United States, Warden at the Federal Prison, Sandstone, Minnesota,	*	
	*	
Appellees.	*	

Submitted: October 25, 1989

Filed: October 31, 1989

Before BOWMAN, Circuit Judge, HEANEY, Senior Circuit Judge, and WOLLMAN, Circuit Judge.

PER CURIAM.

Rudy G. Stanko, a federal prisoner, appeals pro se from the District Court's order[1] denying his petition for a writ of habeas corpus filed under 28 U. S. C. § 2241. For reversal Stanko argues that the United States Parole

1 The Honorable Harry H. MacLaughlin, United States District Judge for the District of Minnesota.

Commission improperly determined his parole release date. We affirm.

Stanko was sentenced to a total of six years in prison following his convictions for conspiracy to violate the Federal Meat Inspection Act, as well as six substantive violations of the Act. The substantive violations fell into the following categories: (1) fraudulent distribution of adulterated meat products; (2) circumvention of federal law requiring inspection of returned shipments; and (3) fraudulent misbranding of meat shipments. United States v. Cattle King Packing Co., 793 F. 2d. 232, 235 (10th Cir.), cert. denied, 479 U. S. 985 (1986).

In determining Stanko's presumptive release date, the Parole Commission graded his offense behavior as a category six offense. According to parole guidelines, conspiracy should be graded in the same category as the underlying offense. 28 C.F.R. § 2.20, ch. 1, 101 (1988). Chapter Twelve states that if a particular offense is not listed in the guidelines, it should be graded by referring to similar offense behaviors listed in Chapters One through Eleven. "If and only if," an offense cannot be

graded in this manner, Chapter Twelve provides a formula for grading its severity based upon the maximum sentence authorized by statute for the offense. Id. § 2.20, ch. 12.

The guidelines do not contain a severity rating for violations of the Federal Meat Inspection Act. Because Stanko's offenses contained the element of fraud, however, the Commission looked to Chapter Three, Subchapter D, which deals with theft and related offenses, including fraud. Under section 331 (a) of Subchapter D, if the value of the property involved is more that $1,000,000, the offenses should be graded as a category six offense.

A victim impact statement contained in the presentence report indicated a loss to the government of over $7,000,000 resulting from the conspiracy of which Stanko was a part. Using a salient factor score of eight and the category six severity rating, the Commission arrived at a guideline range of forty to fifty-two months for Stanko to serve before release. See 28 C.F.R. § 2.20. The Commission then added four months to this range

graded in this manner, Chapter Twelve provides a formula for grading its severity based upon the maximum sentence authorized by statute for the offense. Id. § 2.20, ch. 12.

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because of two disciplinary infractions committed by Stanko while in prison. See 28 C.F.R. § 2.36 (a)(1)(1988). The Commission concluded that a departure from the guideline range of forty to fifty-six months was not warranted and ordered Stanko to serve two-thirds of his sentence or forty-eight months.[2]

Stanko contends the Commission abused its discretion by grading his offense under Chapter Three rather than using the formula provided in Chapter Twelve, which he asserts would have produced a guideline range of twelve to eighteen months. This argument is without merit. In order to convict Stanko of the conspiracy and underlying offenses, the jury had to find that he acted with the intent to defraud. Cattle King, 793 F. 2d at 241. Because Chapter Three refers to offenses involving fraud, the Commission was required to grade Stanko's behavior accordingly.

---

2 The Notice of Action issued by the Parole Commission states that Stanko was ordered to "continue to expiration". Stanko has interpreted this to mean that he must serve his entire six-year sentence. The district court found, however, and its is clear from the record, that the Commission ordered Stanko to serve until the expiration of two-thirds of his sentence.

Stanko also argues the Parole Commission usurped a judicial function by convicting him of fraud, and thereby increased his imprisonment, which amounted to the imposition of a prohibited bill of attainder upon him. This argument is equally without merit. See United States vs. Van Horn, 798 F. 2d 1166, 1168 (8th Cir. 1986) (bill of attainder is a legislative determination of guilt which metes out punishment without the benefit of judicial process). The Parole Commission did not convict Stanko of fraud or impose any additional punishment upon him. It simply determined his presumptive release date, which it clearly had the authority to do. United States vs. Addonizio, 442 U. S. 178, 189 & n. 15 (1979)(trial court may set defendant's date of eligibility for parole within certain guidelines, but whether defendant actually will be paroled at that time is decision of Parole Commission).

Stanko also contends the Parole Commission's reliance on the presentence report was improper because it contained information that related to the conspiracy charge but never was given in court. There was nothing improper about the Commission's consideration of that

information. "The Parole Commission has broad discretion to consider the overall circumstances of the prisoner's offense behavior. . . . Moreover, 18 U.S.C. § 4207 explicitly provides that the Parole Commission may utilize information in presentence investigation reports." Briggs vs. United States Parole Comm'n, 736 F. 2d 446, 449 (8th Cir. 1984).

Stanko raises seven additional objections to the Parole Commission's decision as follows: the Commission (1) failed to advise him as to what steps he could take to enhance his chances of release; (2) failed to act as an independent nonpartial agency because it refused to grant parole even though there were no witnesses opposing his parole; (3) failed to protect his "constitutional and statutory rights of individual sovereignty from corporate liability;[3] (4) failed to take into account an unwarranted disparity between the sentence he received and the sentence of a codefendant;

---

3 Stanko seems to be arguing here that he was improperly held criminally liable for the actions of his company, the Cattle King Corporation. This argument was consideration and rejected by the Tenth Circuit on Stanko's direct appeal. Cattle King, 793 F. 2d at 240.

(5) failed to address each count of his conviction; (6) failed to use professional language; and (7) improperly added four months to his guideline range because of his disciplinary infractions.

None of Stanko's objections provide a basis for reversing the Commission's decision. "In reviewing the Parole Commission's decision, this court must affirm unless the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Perry vs. United States Parole Comm'n, 831 F. 2d 811, 812 (8th Cir. 1987) (citing 5 U.S.C. § 706 (2)(A)), cert. denied, 108 S. Ct. 1230 (1988). Our review of the record reveals the Commission had a valid basis for its decision and arrived at it in accordance with law.

Finally, Stanko contends his petition for a writ of habeas corpus should have been treated alternatively as a petition for a writ of mandamus. A writ of mandamus may be issued only in extraordinary situations and only when the party seeking the writ has no alternative means of obtaining the relief he desires. Kerr v. United States Dist. Court, 426 U.S. 394, 402-03 (1976). A petition for a writ of

habeas corpus was the proper vehicle for attacking the Parole Commission's decision.

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

Rudy G. Stanko,

Civil 5-88-141

Petitioner,

vs. REPORT & RECOMMENDATION

United States Parole Commission, Attorney General of the United States, and Warden John Sullivan,

Respondents.

This matter is on before the undersigned United States Magistrate on petitioner's pro se application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. It has been referred for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 16.

I. BACKGROUND

Petitioner is a federal prisoner incarcerated at the Federal Correctional Institution in Sandstone, Minnesota, serving a six-year sentence for conspiracy to violate the Federal Meat Inspection Act. See United States v. Cattle King Packing Co., Inc., 793 F. 2d. 232 (10th Cir.), cert.

denied, 479 U. S. 985 (1986). Following his incarceration, an initial parole hearing was held on November 3, 1987. The examiner panel rated petitioner's severity rating at Category Six and he was given a salient factor score of 8. The panel determined the petitioner's guideline range at 40-56 months. Because petitioner would ordinarily not be released until 48 months, after service of two-thirds of his sentence, the panel recommended that petitioner be required to serve that amount of time. The Parole Commission adopted the recommendation of the panel and determined that petitioner be required to serve the 48 months. In this action, petitioner is challenging this determination, on a number of grounds. He contends that the Commission based its decision on improper factors and information, that it failed to follow its own rules and that it was prejudiced against him. Specifically, his pleadings allege the following errors:

> 1. The Parole Commission relied upon erroneous information in the presentence investigation report in rating petitioner in severity category 6;
>
> 2. The Commission was unprofessional in its treatment of petitioner in that improper comments were made about the nature of his

crimes and his failure to pay the fine imposed in his sentence;

3. The Commission relied upon prison incident reports in increasing his incarceration period, such non-judicial imposing of imprisonment being an unconstitutional;

4. The Commission's failure to grant parole after petitioner's serving of one-third of his sentence was a Bill of Attainder;

5. The Commission failed to follow its own rules, in that it failed to consider the more lenient sentence give his co-defendant, it failed to address petitioner's particular convictions and it failed to advise petitioner what steps may be taken to enhance his release.

II. DISCUSSION

In reviewing the decision of the Parole Commission, this court is severely restricted in its review. Brest vs. Ciccone, 371 F. 2d 981 (8th Cir. 1967). It is not the role of courts to second-guess the Parole Commission. See Edwards vs. United States, 574 F. 2d. 937, 942 (8th Cir. 1978), cert. dismissed, 439 U.S. 1040 (1979). Nor is it for the court to reweigh the evidence relied upon by the Parole Commission in reaching its decision. Only if it is shown that the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law may

this court overturn the decision of the Commission. Perry v. United States Parole Commission, 831 F. 2d 811 (8th Cir. 1987), cert. denied, ____ U. S. _____, 108 S. Ct. 1230 (1988).

A. Presentence Investigation Report

Petitioner claims error in the Commission's reliance upon the contents of the presentence investigation report. He claims that the Commission erroneously relied upon disputed information, which consisted of charges upon which petitioner was not tried, and a determination that the losses to the government as a result of petitioner's conduct came to more than $7 million. Petitioner claims that this conclusion reflects false allegations for which he was never tried or convicted. This claim is without merit. The Parole Commission is direct to consider presentence investigation reports by 18 U.S.C. § 4207(3). United States Dept. of Justice v. Julian, ____ U.S. ___, 108 S. Ct. 1606, 1609 (1988). The Commission may consider allegations of criminal activity, Blue vs. Lacy 857 F. 2d. 479, 481 (8th Cir. 1988); Briggs vs. United States Parole Commission, 736 F.

2d. 446, 449 (8th Cir. 1984), including factors the sentencing court could not or did not consider. United States vs. Stevens, 559 F. Supp. 1007 (D. Kan. 1983). The reliance of the Commission on the victim impact statement estimating the total monetary loss to the government to be over $7 million was entirely proper.

Further, the issues regarding the accuracy or inaccuracy of the presentence report has been before at least one other court in petitioner's search for relief. Despite his full and fair opportunity to challenge the report at his sentencing, he claimed inaccuracies in the report in his motion before the District Court in Colorado to set aside his sentence. The Court in that instance determined that petitioner was foreclosed from raising the question of inaccuracies because he bypassed his opportunity to dispute the information at his sentencing. United States vs. Rudolph G. Stanko, Cr. No. 84 CR 94 (D. Colo. June 24, 1987). See also Poor Thunder vs. United States, 810 F. 2d 817, 820 (8th Cir. 1987); United States vs. Leonard, 589 F. 2d 470, 471-72 (9th Cir. 1979).

B. Unprofessional Statements

Petitioner argues that the Commission's prejudice against him was apparent by several unprofessional comments by members of the panel during his initial parole hearing. He claims the comments regarding the nonpayment of the fine imposed by the sentencing court amount to "extortionate demands." He further claims that the comments of the panel that the sale of low-quality, mislabeled meat for use in the school lunch program was unwholesome, was unprofessional on the part of the panel members. While perhaps the comments were a bit untoward, the comments along do not amount to the denial of any right of constitutional dimension.

C. Prison Incident Reports

Petitioner further challenges the reliance of the Commission on several prison incident reports in reaching its decision. He claims that the Commission's use of two disciplinary reports violate the Commission's rules. 18 U.S.C. § 4207 provides: "In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant: (1)

reports and recommendations which the staff of the facility in which such prisoner is confined may make." The use of the incident reports was entirely proper, and in fact called for by the statute. See, Hayward v. United States Parole Commission, 659 F. 2d 857, 861 (8th Cir. 1981), cert. denied, 456 U. S. 935 (1982).

D. Bill of Attainder

Petitioner also contends that the Parole Commission's failure to grant parole after the petitioner's serving of one-third of his sentence constitutes a Bill of Attainder. Petitioner reads the language of 18 U.S.C. § 4205, stating that a prisoner shall be eligible for parole after serving one-third of his sentence as a directive to the Commission to grant parole after that time. Petitioner has failure to distinguish mere eligibility for parole from actual parole. Serving one-third of his sentence may make petitioner eligible for a determination of paroleability at that time, but in no way requires the Parole Commission to release petitioner. Priore v. Nelson, 626 F. 2d. 211, 216 (2nd Cir. 1980); Moore v. Nelson, 611 F.

2d. 434, 437 (2nd Cir. 1979) see United States v. Ferri, 652 F. 2d. 325, 328 (3rd Cir. 1981); United States v. Parker, 617 F. 2d. 141, 142 (5th Cir. 1980). Petitioner argues that the failure of the Parole Commission to release him at his one-third date is a usurpation of the judicial function of the courts by an executive agency, the commission, and thus a violation of the constitutional prohibition of bills of attainder. A bill of attainder is a determination of guilt which metes out punishment to named individuals. United States vs. VanHorn, 798 F. 2d. 1166, 1168 (8th Cir. 1986), citing United States vs. Lovett, 328 U.S. 303 (1946). In passing a bill of attainder, Congress departs from its constitutional role of providing general rules for the government of society and usurps the judicial role by making a legislative determination of guilt. VanHorn, 798 F. 2d at 1168, citing Fletcher vs. Peck, 6 Cranch (10 U.S.) 87 (1810). Such a law would deprive the accused of the protections afforded by judicial process. Plaintiff, however, cannot be said to be the victim of a bill of attainder. He was convicted after a trial in which he fully participated. His guilt was determined by a jury, not

Congress. He is not the victim of an unconstitutional bill of attainder.

E. Failure To Follow Own Rules

Petitioner finally argues that the Commission failed to follow its own rules. Among these include a failure to disclose to petitioner the steps that could be taken to hasten his release, failure to consider that his co-defendant received a more lenient sentence, failure to disclose petitioner's file to petitioner's representative, and refusal to consider information on petitioner's unique legal theory of "individual sovereignty." Petitioner has failed with any specificity to allege how each of these asserted errors conflicted with the rules of the Parole Commission. While 18 U.S.C. § 4208(g) provides that the Commission shall if feasible, include a statement as to how a prisoner may enhance his chances for relief, it is by no means a requirement that the Commission do so. As to the claim that petitioner's co-defendants received more lenient sentences, it has been held that the lenient treatment of one defendant does not create a corresponding right to leniency for other defendants.

Sheary v. United States Parole Commission, 822 F. 2d. 556, 559 (5th Cir. 1987); Entrekin v. United States, 508 F. 2d. 1328, 1330 (8th Cir. 1974); cert. denied, 421 U.S. 977 (1975). The allegation that petitioner's representative was denied access to petitioner's file is without factual basis. Petitioner has put forth no facts indicating that such a request was ever made. Petitioner himself had reviewed the file prior to the initial parole hearing, as was his right. Finally, the failure of the Commission to give credence to petitioner's denial of legal responsibility for his acts due to his "individual sovereignty" does not give rise to any constitutional deprivation. Petitioner's direct appeal on his conviction makes clear that at trial the issue of individual versus corporate liability was raised and adjudicated. 739 F. 2d at 241. This court will not reconsider defenses that were rejected by the jury.

Accordingly, based upon the foregoing, and all the files, records, and proceedings herein.

IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of habeas corpus be DENIED.

DATE: January 9, 1989.

JANICE M. SYMCHYCH
United States Magistrate

Pursuant to Local Rules 16C(2), any party may object to this report and recommendation by filing with the Clerk of court and serving all parties, within ten days, a writing which specifically identifies those portions of this report to which objection is made and the legal and factual basis for that objection. All memoranda and other documents to be submitted in support of this report must be filed within seven days of the making of any objection. Failure to comply with this provision shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Rudy G. Stanko,

Petitioner,

v.

United States Parole Commission, Attorney General of the United States, and Warden at the Federal Prison, Sandstone, Minnesota,

Respondents.

CIVIL 5-88-141

ORDER

Rudy G. Stanko, #18259-013, FCI, P. O. Box 1000, Sandstone, MN 55072, pro se.

Jerome G. Arnold, United States Attorney, and John M. Lee, Assistant U. S. Attorney, 234 U. S. Courthouse, Minneapolis, MN 55401, for respondents.

This matter is before the Court on petitioner's objections to the January 9, 1989 report and recommendation of the United States Magistrate.

Based on the Court's independent de novo determination of the Magistrate's report, findings and

recommendations, and the Court finding itself in agreement with the report and recommendation,

IT IS ORDERED that:

1. the objections of the petitioner to the report and recommendation are overruled;

2. the Court adopts the report and recommendation; and

3. petitioner's petition for a writ of habeas corpus is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Judge Harry H. MacLaughlin
United States District Court

DATED: June 8, 1989

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

DEFENDANT} RUDOLPH G. "BUTCH" STANKO

DOCKET NO 84 - CR- 94

JUDGEMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date October 11, 1984

COUNSEL 1___1 WITHOUT COUNSEL

1_X_1 WITH COUNSEL Robert P. Chaloupka
(Name of Counsel)

1___1 GUILTY, and the court being satisfied that there is a factual basis for the plea

PLEA 1___1 NONO CONTENDERE,

1_X_1 NOT GUILTY

THERE BEING A XXXXX VERDICT OF

1___1 NOT GUILTY,
{ Defendant is discharged
{
{ 1_X_1 GUILTY

FINDINGS & JUDGMENT

Defendant has been convicted as charged of the offense(s) of conspiracy to violate the Federal Meat Inspection Act and violations of the Federal Meat Inspection Act, in violation of Title 18 U.S.C. § 371, and Title 21 U.S.C. § 605, 610 (a) and 610(c).

SENTENCE OR PROBATION

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the court was shown, or appeared to the court, the court adjudicate the defendant guilty as charged and convicted

ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONTI- OF PROBATION

and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years as to Count I; two (2) years as to Count III, said term of imprisonment to run concurrently with the term of imprisonment imposed in Count I and IV; three (3) years as to Count IV, said term of imprisonment to run concurrently with the term of imprisonment imposed in Count I; two (2) years as to Count VI, said term of imprisonment to run consecutively, not concurrently, with the term of imprisonment imposed in Counts I and IV; two (2) years as to Count IX, said term of imprisonment to run concurrently with the term of imprisonment imposed in Counts I and IV, two (2) years as to Count XII, said term of imprisonment to run concurrently with the term of imprisonment imposed in Counts I and IV; two (2) years as to Count XIII, said term of imprisonment to run concurrently with the term of imprisonment imposed in Count VI. The sentence imposed is to run consecutively with the sentence imposed in 80-0-68, United States District Court for the District of Nebraska, a six (6) month sentence.

Defendant is ORDERED to pay a fine to the United States of America of $10,000 as to each of these seven (7) counts for a total of $70,000 to stand on commitment.

The Court reserves ruling on the Victim-Witness Protection Act, pursuant to Title 18 U.S.C. § 3579 and 3580.

_1 U. S. District Judge }
}
_1 U. S. Magistrate }

Sherman G. Finesilver

PAROLE HEARING TRANSCRIPT

PAGE 18

I would place some money on this, that this is why he gave you six years, that he not only thought it was a monetary loss to the government, but thought that there was a possibility of providing lower grade meat to the children of this country. And I would guess that was in his thinking, not necessary harmful, but lower grade meat. . . .

. . . . Number one, is that you did it on the heals of just being placed on probation for similar behavior, Number two it amounted to large scale monetary losses to the government and Number 3, I am not saying that you provided dangerous meat, I am saying that you provided meat according to the government of a lesser grade than what you were paid for, which was to be used to feed children.

Exhibit E

PAROLE COMMISSION RULES AND REGULATIONS

CHAPTER ONE-OFFENSES OF GENERAL APPLICABILITY

101 Conspiracy

Grade conspiracy in the same category as the underlying offense.

Exhibit F

PAROLE COMMISSION RULES AND REGULATIONS

CHAPTER TWELVE-MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One-Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One-Eleven, the following formula may be used as a guide.

Maximum Sentence Authorized by Statute (Not necessarily the sentence imposed)	Grading (Category)
< 2 years	1
2 - 3 years	2
4 - 5 years	3
6 - 10 years	4
11 - 20 years	5
21 - 29 years	6
30 years to life	7

Exhibit G

CHAPTER THIRTEEN-GENERAL NOTES AND DEFINITIONS

SUBCHAPTER A- GENERAL NOTES

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. Exception: in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level.

(a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e. g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offenses severity rating. In instances not specifically covered in the guidelines, the decision-makers must exercise discretion aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the

severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	*Points*	*Severity*	*Points*
Category One	= 1/9	Category Five	= 9
Category Two	= 1/3	Category Six	= 27
Category Three	= 1	Category Seven	= 45
Category Four	= 3		

Ex: 3 Category Five Offenses [3x(9)=27] = Category Six
5 Category Five Offenses [5x(9)=45] = Category Seven
2 Category Six Offenses [2x(27)=54] = Category Seven

SENTENCING TRANSCRIPT OF RUDY G. STANKO

PAGES 48 and 49

. . . . The product we are talking about here directly affects the health and well-being of the people of this country. There is a need to warn and deter other owner/operators and executives that they are and will be held ultimately responsible for implementing and enforcing policies and procedures to ensure compliance with the Meat Inspection Act, and that they cannot insulate themselves from this responsibility whether or not they are physically present at their packing plants.

. . . . Probably taken in its individuality this was not a serious type of infraction. . . .

Exhibit G

U. S. Department of Justice

U. S. Parole Commission

ORDER

Name Stanko, Rudolph

Register Num 18259-013 *Institution* FMC-Rochester, MN

In the case of the above-named, the Commission has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release status is hereby order:

Continue to expiration

Reviewed on
Nov 23 1987
BY REGIONAL
ADMINISTRATOR

R. J. Alex 871103
G. Lasley 11-3-87
Carol Pavilock Getty 11/13/87

EXHIBIT I

PAROLE HEARING TRANSCRIPT

PAGE 4

. . . .Wait a minute Mr. Stanco, I'm not interested in all the court procedures. I'm interested in your statement on what happened in the street, as we say, in the offence behavior. Was the meat bad, Did you supply it, etc. . . .

. . . . I am not interested in what happened at the trial, I am interested in what happened in the street, would you please tell us. . . .

Exhibit J

[TABLE 3 - PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE
GREATEST CATEGORY

The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendations as to an appropriate disposition

CODE	PROHIBITED ACTS	SANCTIONS	
100	Killing	A.	Recommend parole date rescission or retardation
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate)	B.	Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended)
102	Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution <u>with</u> violence	C.	Disciplinary Transfer (recommend)
		D.	Disciplinary segregation (up to 60 days)
103	Setting a fire (charged	E.	Make monetary

	with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e. g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218 or 329)	F.	Withhold statutory good time (Note - can be in addition to A through E -- cannot be the only sanction executed)
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition		
105	Rioting		
106	Encouraging others to riot		
106	Taking hostage(s)		
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade)		
109	Possession, introduction, or use of any narcotics, marijuana drugs, or related paraphernalia not prescribed for the individual by the medical staff		

110 Refusing to provide a urine sample or to take part in other drug-abuse testing

198 Interfering with a staff member in the performance of duties (Conduct must be of the Greatest Severity nature.) This charge is to be used only when another charge of greatest severity is not applicable.

199 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (Conduct must be of the Greatest Severity nature.) This charge is to be used only when another charge of greatest severity is not applicable.]

[TABLE 3 (CONT'D)

HIGH CATEGORY

CODE	PROHIBITED ACTS	SANCTIONS
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions--without violence	A. Recommend parole date rescission or retardation
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days which ever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended)
202	(Not to be used)	
203	Threatening another with bodily harm or any other offense	
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others to avoid bodily harm, or under threat of informing	C. Disciplinary transfer (recommend)
205	Engaging in sexual acts	
206	Making sexual proposals or threats to another	D. Disciplinary segregation (up to 30 days)
207	Wearing a disguise or a mask	E. Make monetary restitution
208	Possession of any unauthorized locking devise, or lock pick, or tampering with or blocking any lock device (includes keys)	F. Withhold statutory good time

209	Adulteration of any food or drink	G.	Loss of privileges: commissary, movies, recreation, etc.
210	(Not to be used)		
211	Possession any officer's or staff clothing	H.	Change housing (quarters)
212	Engaging in, or encouraging a group demonstration	I.	Remove from program and/ or group activity
213	Encouraging others to refuse to work, or to participate in a work stoppage	J.	Loss of job
214	(Not to be used)	K.	Impound inmate's personal property
215	Introduction of alcohol into BOP facility		
216	Giving or offering an official or staff member a bribe, or anything of value	L.	Confiscate contraband
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes	M.	Restrict to quarters
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value		

219 Stealing (theft: this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which date is stored.)

220 Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bad), wrestling, or other forms of physical encounter, or military exercises or drill]

221 Being in an unauthorized area with a person of the opposite sex without staff permission.

222 Making, possessing, or using intoxicants

223 Refusing to breath into a breatalyzer or take part in other alcohol abuse testing

298 Interfering with a staff member in the performance of duties (Conduct must be of the High Severity nature.) This charge is to be used only when another charge of high severity is not applicable.

299 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons (Conduct must be of the High Severity nature.) This charge is to be used only when another charge of high severity is not applicable.]

[TABLE 3 (CONT'D)

MODERATE CATEGORY

CODE	PROHIBITED ACTS	SANCTIONS
300	Indecent exposure	A. Recommend parole date rescission/ retardation
301	(Not to be used)	
302	Misuse of authorized medication	B. Forfeit earned statutory good time up to 25% or up to 30 days whichever is less, and/or terminate or disallow extra good time (an extra good sanction may not be suspended)
303	Possession of money or currency unless specifically authorized, or in excess of the amount authorized	
304	Loaning of property or anything of value for profit or increased return	
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels	C. Disciplinary transfer (recommend)
306	Refusing to work, or to accept a program assignment	D. Disciplinary segregation (up to 15 days)
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order	E. Make monetary restitution

	which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110)	F.	Withhold statutory good time
		G.	Loss of privileges: commissary, movies, recreation, etc.
308	Violating a condition of a furlough	H.	Change housing (quarters)
309	Violating a condition of a community program	I.	Remove from program and/or group activity
310	Unexcused absence from work	J.	Loss of job
		K.	Impound inmate's personal property
		L.	Confiscate contraband
		M.	Restrict to quarters
		N.	Extra duty]

Institution Discipline Committee Report

FPC, Leavenworth — Institution

1 — Institution Security Level

NAME OF INMATE: STANKO, Rudy REG. NO. 18259-013 UNIT: X

Date of Incident Report: 12-03-86 Offense Code: 328/305/400

Date of Incident: 12-02-86 Summary of Charge(s): Possession of Contraband/Possession of Property Belonging to Another Inmate/Giving Money or Anything of Value to Another Inmate

. . . .

SANCTION OR ACTION TAKEN

Offense Severity Moderate
SGT Available 30

Two weeks restrict to qtrs
20 hours extra duty
Confiscate contraband

Exhibit L

Institution Discipline Committee Report

FMC, Rochester
Institution

Administrative
Institution Security Level

NAME OF INMATE: STANKO, R. REG. NO. 18259-013 UNIT: GPU

Date of Incident Report: 10-5-87 Offense Code: 306

Date of Incident: 10-5-87 Summary of Charge(s):
Refusing to accept a program

. . . .

SANCTION OR ACTION TAKEN

Offense Severity Moderate
SGT Available III

Two weeks restrict to qtrs
Forfeit 27 days SGT

Exhibit L

5322.7 July 7, 1986

Security and Custody

Monitoring the Federal Bureau of Prisons' Classification Systems

by Micheal Janus, Jerome Mabli, and J. D. Williams

(page 36)

. . . . This is because 100 and 200 level incidents are more important and serious than are 300 and 400 level. Additionally, 300 and 400 level reports could be more easily reflect staff discretion.

Exhibit M